

BEFORE THE TENNESSEE REGULATORY AUTHORITY

REC'D IN
REGULATORY AUTH.

**SHOW CAUSE PROCEEDING AGAINST)
MINIMUM RATE PRICING, INC.)**

**DOCKET NO.
98-00018**

FEB 19 PM 4 19

OFFICE OF THE
EXECUTIVE SECRETARY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes now the Consumer Advocate Division and the Consumer Services Division Staff of the Tennessee Regulatory Authority and jointly files these proposed findings of fact and law.

1. The initial decision in this case is whether Minimum Rate Pricing's Certificate of Convenience and Necessity to provide intrastate telecommunications services in Tennessee should be revoked or whether a Cease and Desist Order should be issued and penalties or fines should be assessed because the company violated other Authority rules, orders or applicable statutes. If violations are found whether or not revocation is determined the Authority would convene stage two (II) of this proceeding to assure that remedies are provided to consumers.

2. Minimum Rate Pricing, Inc. (MRP) is subsidiary of Parcel Consultants, Inc. The normal business interests of Parcel Consultants was not disclosed. MRP also has another affiliate, National Tele-Communications, Inc.¹ National Tele-Communications, Inc. is another name for Parcel Consultants.²

¹ Testimony of Drew Keena, Vol. III p. 578, 19 & 20.

² Testimony of Drew Keena, Vol. III p. 572 lines 17-19.

3. MRP is a reseller of telecommunications services based in New Jersey.³ It has no full-time employees in Tennessee or any of the states in which it does business, except for New Jersey. In New Jersey, MRP has one full-time employee, its vice president, Mr. Drew Keena. The only other person directly associated with MRP is its President, Paul Salzano, who is also President of Parcel Consultants and National Tele-Communications.

4. MRP was created on July 31, 1995 and gained approval to do business in the State of Tennessee after registering with the Tennessee Secretary of State on October 27, 1995⁴ and after filing an Application For Certificate of Convenience and Necessity (CCN) with the Tennessee Regulatory Authority on July 15, 1997.⁵ Since that time, MRP has grown into a multi-million dollar⁶ corporation that operates in at least half the states in the nation.

5. Tenn. Admin. Rule 1220-4-2-.57 (6) provides that either a falsified application for a certificate of convenience and necessity or a failure to disclose significant information in an application justifies revocation of a reseller's certificate.

6. The record demonstrates failed to disclose its relationship with Parcel Consultants and its other affiliate in its Application for a CCN. In fact, Mr. Keena testified that Parcel

³ Prefiled direct testimony of Drew Keena p.1.

⁴ Exhibit 29 Vol. V p. 1080 line 5.

⁵ Exhibit 24 Vol. IV p. 839, Line 11.

⁶ \$150,000,000 to \$200,000,000 estimated 1997 gross revenue. Drew Keena, Vice President of MRP in direct testimony, December 10, 1998 page 602. Gross Receipts for Tennessee interLATA calls equal \$740,849 for 1997 and \$687,885 for partial year 1998. (Vol. I, pp. 604,605) Per Ms. Colley in response to question from Chairman Malone.

Consultants is actually doing business as MRP in other states.⁷ Mr. Keena also testified that important MRP functions are performed by Parcel Consultants employees such as Adam Kolodny⁸ who handles MRP's financial affairs.

7. In addition, it appears that false or misleading information has either been provided to the Tennessee Secretary of State's office or to the Authority. MRP's filing at the Secretary of State's office lists Mr. Keena as Secretary⁹ while Mr. Keena denies¹⁰ in this proceeding that he has ever held that position and denies familiarity with financial information about the company.¹¹ He indicates that MRP's financial affairs are handled by Parcel Consultants employees.¹² MRP's last check to the Authority for payment of franchise fees indicates that all three of the affiliates are named on the bank account.¹³ MRP violated Tenn. Admin. Rule 1220-4-2-.57 (6) and its certificate should be revoked.

8. MRP primarily sells the use of a facilities based provider's physical network, but also sells pagers and attendant telecommunications services.¹⁴

9. MRP's total gross revenues were between \$150 million to \$200 million for

⁷ Direct Testimony of Drew Keena, Vol. III, pp. 687-688.

⁸ Direct Testimony of Drew Keena, Vol. III p. 600 lines 5-9.

⁹ Exhibit 29 Application for Certificate of Authority with Secretary of State.

¹⁰ Direct Testimony of Drew Keena, Vol. V p. 1079 line 13.

¹¹ Direct Testimony of Drew Keena, pp. 597-600.

¹² Direct Testimony of Drew Keena, p. 600 5-9.

¹³ See, Complaint of Carol Mann, Complaint No. 97-1101, Check No. 00072253, dated 6/18/97.

¹⁴ Prefiled direct testimony of Drew Keena p.1.

1997.¹⁵ During this period the Tennessee Regulatory Authority (Authority) began receiving an exceptionally large number of complaints against MRP. On each occasion, Authority Staff contacted MRP by letter to discuss these complaints, and to ask the company to resolve not only the complaints, but the underlying problems which caused those complaints.¹⁶

10. The increased complaints and apparent failure of the company to resolve the underlying problems eventually led the agency to issue a Show Cause Order. On January 6, 1998, at a regularly scheduled Authority Conference, the Tennessee Regulatory Authority, on its own motion, pursuant to Tenn. Code Ann. § 65-2-106 and Authority Rule 1220-4-2.57(16)(c), considered the preliminary investigative findings of the Authority's Consumer Service Division ("the Staff") regarding Minimum Rate Pricing, Inc. ("MRP"). The Staff's preliminary investigation of MRP indicated that, in 1997, approximately forty-seven (47) Tennessee telephone service consumers filed complaints with the Authority against MRP alleging that MRP either changed their chosen long distance telephone service without their knowledge or consent or charged the consumer for services or products not ordered.¹⁷

11. The Staff continued to investigate and continued to have problems in resolving "MRP complaints." The problems identified by the Authority Staff included:

1. MRP failing to timely conduct a full and prompt investigation of complaints made by its customers and for failing to timely reply to the Authority with sufficient evidence

¹⁵ Drew Keena direct testimony Vol. III p. 602.

¹⁶ Collective exhibit of complaints.

¹⁷ Show Cause Order p.1.

to demonstrate its compliance with Authority rule 1220-4-2-.56;¹⁸

2. MRP, by failing to properly verify its orders for changes in long distance carriers, by failing to utilize an “appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative [to] obtain[] the customer’s oral authorization to submit the PIC change order that includes appropriate verification data (including the customer’s date of birth or social security number)”;¹⁹

3. MRP either has or is violating Authority rule 1220-4-2-.56(1)(d) by failing to provide each customer with a timely information package that contains a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week, along with the name of the person ordering the change, and clear information pertaining to MRP’s practice of automatically switching a customer’s long distance service until the customer directly notifies MRP of it desire to change long distance service providers;²⁰

4. MRP either has or is violating Authority rule 1220-4-2-.56(1)(e) by apparently failing to maintain all “evidence of change orders for one year for dispute resolution”;

5. MRP either has or is violating Authority rule 1220-4-2-.56(2) by either failing to or by making misleading and deceptive mandatory disclosures to consumers when seeking to change a customer’s PIC; and

6. MRP either has or is violating Authority rule 1220-4-2-.57(11) by billing customers for intrastate directory assistance and telephone calls made between two (2) points in the same county²¹ in Tennessee and because such charges exceed the maximum rates of the predominant LEC or IXC for an equivalent call.

12. On July 27, 1998 the Authority entered an Order pursuant to Tenn. Code Ann. § 65-2-106 requiring MRP to appear and show cause why a cease and desist order, penalty and/or Order revoking MRP’s authority to provide telecommunications services in Tennessee should

¹⁸Tr. Vol. IV p. 880, Testimony of Eddie Roberson;
Tr. Vol IV p. 2 line 32, Testimony of Jean Curran
Tr. Vol. IV p.2 line 37 and 38 Testimony of Vivian Wilhoite.

¹⁹ Tr. Vol. III p. 627-630, Testimony of Drew Keena.

²⁰ Tr. Vol. I p. 267 lines 1-4, Testimony of Igor Popovic.

²¹Tenn. Code Ann. § 65-21-114.

not be issued. The Directors also appointed a Hearing Officer to take such action as was necessary to facilitate the orderly and efficient hearing of the matters by the Authority. On September 3, 1998, the Executive Secretary of the Authority issued a Notice, pursuant to Tenn. Code Ann. § 4-5-306, for a Pre-hearing Conference on September 17, 1998, to: determine a statement of issues, obtain admissions of facts and documents in an effort to avoid unnecessary proof, establish witnesses as appropriate, establish a procedural schedule for the discovery of additional matters relevant to the allegations against MRP, and for such other purposes allowed by law.

13. On September 8, 1998, Jerry C. Colley, Esq., filed a notice of Appearance on behalf of MRP.

14. Without prior or contemporaneous explanation, MRP failed to appear at the September 17, 1998 Pre-hearing Conference. The Hearing Officer proceeded to conduct the September 17, 1998 Pre-Hearing Conference without the participation of MRP, pursuant to Tenn. Code Ann. § 4-5-309(a), having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.²² MRP also failed to reply to the Authority's Order requiring MRP to appear and show cause. The Hearing Officer determined that MRP should be compelled by Order to file a written answer in response to the allegations presented in the July 27, 1998, Order, no later than September 24, 1998.

MRP's Contentions in its Reply to Show Cause Proceeding.

²² The record reflects that MRP has a pattern of failing or refusing to appear before regulatory bodies or ignores the regulatory body even when its certification is at issue. See orders of Nebraska, Wisconsin, and the Federal Communications Commission.

15. MRP's contends in its "Reply" to the Show Cause Order that the action taken by the Authority, "arises out of allegations by the Authority that MRP has engaged in conduct prohibited by the Authority's rules. MRP contends that it has not violated the Authority's Rules 1220-4-2-.56, 1220-4-2-.13(3) and 1220-4-2.57. MRP further asserts that even if any violations occurred, they do not justify the revocation of MRP's certificate to operate in the state of Tennessee".

1. MRP further contends that the Authority carries the burden of proving that MRP is violating its rules. MRP contends:

a. The majority of the alleged violations asserted fall under Rule 1220-4-2-.56, "that MRP has failed to verify orders for PIC changes by failing to use "an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative".

b. The Authority contends that MRP has or is violating another subsection of this rule by failing to provide customers with an "information package" regarding its services.

c. The Authority contends that MRP has engaged in acts violating this rule by "failing to maintain all "evidence of change orders for one year for dispute resolution".

2. MRP provides services to customers according to procedures which are in compliance with the Authority's rules.

3. MRP has implemented broad-based revisions in its business that are designed to be responsible to the Authority's concerns and reduce consumer dissatisfaction to a de minimis level.

CAD's Allegations:

16. The Consumer Advocate Division alleged:

1. MRP, its employees or agents have engaged in "slamming" which is the unlawful changing or switching of consumers

telecommunications service to MRP, or its agents or owners.

2. That the Tennessee Regulatory Authority's Show Cause Order contains forty-seven incidents of slamming involving MRP which affect or will affect the rights, duties or privileges of Tennessee consumers, and the Consumer Advocate Division adopts said Show Cause Order and its contents herein by reference. Additional complaints by consumers have been and may be filed with the Tennessee Regulatory Authority, other state agencies, MRP's facilities based provider, MRP, local exchange companies, facilities based carriers, and long distance carriers since issuance of the Show Cause Order.

3. That the Show Cause Order is premised upon complaints and that the rights, privileges and duties of greater numbers of consumers are adversely affected by MRP or its agents unlawful conduct.

4. That MRP's, or its agents, or owners actions violate Tenn. Code Ann. §65-4-125.

5. That MRP, its employees, owners or agents designated or changed the provider of telecommunications services to subscribers when it knew or reasonably should have known that it or any persons acting on its behalf did not have the authorization of the subscribers.

6. That MRP, its employees, owners or agents violated the provisions of its Title 65, chapter 4 certification, by unlawfully designating or changing providers without their consent and by failing to pay statutory damages and should be subject to civil penalties and to revocation of its certificate to do business in Tennessee.

7. MRP, or its employees or agents, through representations, acts or practices which are misleading, deceptive or unfair, have changed or switched Tennessee consumers telecommunications service to service provided by MRP, its employees, agents or owners.

8. MRP, its employees, owners, or agents have engaged in a pattern or practice of changing or switching telecommunications service by representations, acts or practices, which are misleading ,

deceptive or unfair.

9. That MRP has failed and refused to pay damages to each subscriber wrongfully affected by MRP's conduct in an amount equal to all charges and fees for services for which the subscriber had not subscribed, including all amounts in excess of allowable charges for such services and any cost incurred to reinstate the subscriber's original telecommunications service.

10. That because many Tennessee consumers in addition to those in the Show Cause Order are adversely affected by MRP's unlawful conduct and that MRP, its agents, employees and owners should be enjoined from billing or collecting any charges directly or indirectly from Tennessee consumers or through any local exchange company or interexchange company until and unless it affirmatively proves that it has the actual authorization of the individual subscriber responsible for the specific telephone line.

11. That MRP or persons acting on its behalf has billed and collected, and are billing and collecting from subscribers to telecommunications services charges for services to which MRP or any person acting on behalf of MRP knows or reasonably should know the subscriber has not subscribed and violates Tenn. Code Ann. § 65-4-125 and the Tennessee Regulatory Authority can "without limitation" enforce the provisions of said statute by finding damages, assessing penalties, and entering an Order of recovery.

MRP did not answer CAD's complaint.

17. At a regularly scheduled Authority Conference on October 6, 1998, counsel for MRP appeared and after discussion with the Parties about MRP concerns about the amount of time available for discovery in the procedural schedule, the Directors instructed the Parties to meet with the Hearing Officer immediately following the Conference. The Hearing Officer subsequently met with the Parties to discuss the procedural schedule.

18. The date for issuance of discovery requests was changed to October 7, 1998, and responses to discovery were due in the Office of the Executive Secretary of the Authority on

October 16, 1998.

19. The Authority Staff timely filed a Discovery Request on October 7, 1998. Despite the extensions of time, however, MRP failed or refused to file its First Set of Interrogatories and Request for Production of Documents until October 13, 1998.

20. Despite the reduced time frame between the time MRP filed its discovery request and the due date, the Authority Staff timely filed its responses to discovery from MRP on October 16, 1998 in accordance with the discovery schedule. MRP again failed or refused to timely file its discovery responses on October 16, 1998.

21. On October 21, 1998, the Staff filed a Motion To Compel MRP's Immediate Response To Discovery Requests, To Require Strict Compliance with Amended Procedural Schedule, and for Sanctions (the "Motion to Compel"). The Staff thereafter orally requested that the Hearing Officer hold the Motion to Compel in abeyance pending MRP's receipt of responses within the next two days and any formal Motion to withdraw the Motion to Compel. MRP filed subsequent responses to the Staff's discovery requests with its responses and Objections to TRA's Requests (the "Responses and Objections") on October 23, 1998. The Authority Staff did not reply to the MRP Responses and Objections nor did it move to withdraw the Motion to Compel.

22. MRP subsequently filed a Motion For Extension of Time on October 24, 1998 citing an "out-of-state" situation of one of MRP's attorneys that conflicted with the September 17, 1998 proceeding. A third Pre-Hearing Conference was scheduled for November 9, 1998.

23. On October 23, 1998 the Office of the Attorney General and Reporter, Consumer

Advocate Division (“CAD”) filed a Petition to Intervene in this proceeding.²³ The Staff and MRP agreed to suspend procedural activities, except for discovery, pending consideration of CAD’s Petition by the Authority. On October 26, 1998, the Executive Secretary of the Authority caused to be issued a Notice of a Pre-Hearing Conference for November 4, 1998 to: address the Petition to Intervene by the CAD, and in relation to that Petition, determine from the CAD a statement of issues; obtain admission of facts and documents in an effort to avoid unnecessary proof; establish witnesses as appropriate, establish a procedural schedule for the discovery of additional matters relevant to the allegations against MRP; and for such other purposes allowed by law.

24. At the November 4, 1998 conference, the Hearing Officer determined that Tennessee consumer’s legal rights, duties, privileges and immunities, or other legal interest may be determined in the proceeding, and no Parties objected at the Pre-Hearing conference to the intervention. The Hearing Officer found the Petition sufficient pursuant to Tenn. Code Ann. §4-5-310 and granted the CAD intervention and participation in this proceeding as its interests may appear.

25. Upon being granted Leave to Intervene, the CAD introduced a Motion to Amend its initial Petition to Intervene, and a revised Petition to Intervene or an Amended Petition to Intervene. The CAD made comments upon the content of the pleadings and suggested that prior to the documents being admitted by the Hearing Officer, that MRP be given adequate time to

²³ The Consumer Advocate Division has statutory authority to represent the interests of Tennessee consumers. Tenn. Code Ann. § 65-4-118.

respond and reply.²⁴ The Hearing Officer gave the parties until noon on November 12, 1998 to object to CAD's revised or amended petition. No objections were filed. MRP also failed to answer the allegations in either of CAD's Petitions.

26. Upon the granting of its Petition to Intervene, the CAD stated that it was requesting the Authority to bifurcate the proceeding so that the initial show cause proceedings would not be unnecessarily delayed.²⁵ CAD would rely on discovery sought by the Authority's for the first phase. The first phase of the proceeding would involve the show cause matters; followed by a second phase addressing damages or refunds to affected consumers. According to the CAD, the show cause proceeding was not necessarily or primarily one involving damages or restitution, but rather for revoking certification. The CAD was primarily interested in the revocation as it went to the likelihood of MRP treating customers fairly and in accordance with law and the compensation issues arising from the evidence presented in the show cause proceeding.

27. Secondly, CAD supported the Authority's position on revocation. The CAD

²⁴ Mr. Williams stated:

The most significant material change to the motion was the withdrawal of the allegations or what could be perceived as allegations against the local exchange companies and the deletion of some other paragraphs. The other paragraph changes are mostly reformulations of what were the basic charges in the initial petition to intervene and some changes to the language in the prayer for relief.

I don't believe that it presents any material change or material harm to any party for it to be there, but, however, to the extent that MRP would like some additional time to review that particular motion and raise any formal objection, the Consumer Advocate Division would not object thereto.

In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated, Transcript of PreHearing Conference, Wednesday, November 4, 1998, at p. 5 (statement of L. Vincent Williams, Esq., Office of the Attorney General and Reporter, Consumer Advocate Division).

²⁵ *Id.*, at p.8, CAD believed that the proceeding should assure that consumers were returned any monies MRP improperly obtained from them.

stated that, ultimately, a second Hearing would be necessary to set damages under Tenn. Code Ann. § 65-4-125; and CAD had proposed the issue of whether Tenn. Code Ann. § 65-4-125 applied.²⁶ MRP requested leave to brief this issue. The Authority Staff and the CAD would be given an opportunity to reply. Dates to facilitate the briefing process were added to the Pre-Hearing schedule. The CAD urged that a Hearing for decertification must come first, followed

²⁶ Tennessee Code Ann. § 65-4-125, provides in pertinent part:

Changes in telecommunications service provider- Regulation-Enforcement.

a) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or persona acting on behalf of the provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.

(b) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

(c) The Tennessee Regulatory Authority shall establish a consumer complaint form on the Internet for reporting telecommunications service providers or persons acting on their behalf who charge the provider of telecommunications services in violation of the provisions of this chapter. Any Internet sites which are maintained by the authority, the general assembly or the governor's office shall contain a link to such form.

(d) The Tennessee Regulatory Authority shall adopt rules implementing the provisions of this section, including, without limitation, rules specifying the manner in which subscriber authorization may be obtained and confirmed.

(e) The Tennessee Regulatory Authority may entertain and decide complaints and issue orders, including, without limitation, show cause orders, to enforce the provisions of this section and its rules against any telecommunications service provider, or any person acting on behalf of any telecommunications service provider.

(f) A telecommunications provider or person acting on behalf of a telecommunications provider who violates any provision of this chapter, any regulation promulgated pursuant to this chapter or any order issued to enforce the provisions of this chapter shall be subject to a civil penalty of one hundred dollars (\$100) for each day of any such violation. Such civil penalty shall be due and payable to the authority and shall be credited to the public utility account.

(g) Any telecommunications provider or person acting on behalf of a telecommunications provider who violates the provisions of this chapter or regulations promulgated pursuant thereto shall pay damages to each subscriber affected by such conduct in an amount equal to all charges and fees for services for which the subscriber has not subscribed, including all amounts in excess of allowable charges for such services, and any cost incurred to reinstate the subscriber's original telecommunications service.

(I) This chapter shall not have the effect of superseding any existing rules of the Tennessee Regulatory Authority, or any order or proceeding to enforce such existing rules. Any such existing rules shall remain in effect until such time as the Tennessee Regulatory Authority adopts new rules pursuant to this chapter.

by a separate Hearing for damages²⁷.

28. MRP argued that as far as the damages are concerned, Tenn. Code Ann § 65-4-125 (f) provides for fines²⁸ and Tenn. Code Ann § 65-4-125 (g) provides for damages by making refunds directly to consumers who have suffered damages. MRP argued that when you try a lawsuit and the judge and the jury decides whether or not the plaintiff can recover, the next step in the same hearing is damages.²⁹ If damages cannot be determined at that time, then the judge or the court or, in this case, the Authority will have time to determine what the damages are.³⁰

29. The Staff argued that, historically, the Authority has been able to assess fines with respect to a company that violated its rules. The Authority Staff also argued that damages to the consuming public as a whole can be encompassed within the scope of the decertification Hearing, but the damages that are expected under Tenn. Code Ann. § 65-4-125 would be damages that would be returned to the individual consumers. The Staff indicated that the examination of Tenn. Code Ann § 65-4-125 may require that additional legal issues be addressed³¹. The Authority Staff agreed that the damage issue was important, but disagreed with both MRP and the CAD that a decision on damages should necessarily occur in the context of the

²⁷ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated.*, at pages 9-10 (statement of L. Vincent Williams, Esq., Office of the Attorney General and Reporter, Consumer Advocate Division).

²⁸ Tenn. Code Ann. § 65-4-125(f) actually provides for civil penalties, not fines.

²⁹ Taken at face value, this statement could indicate agreement by MRP that a bifurcation of the proceedings was appropriate.

³⁰ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated, Transcript*, at pp. 14-15 (statement of Mr. Jerry C. Colley, Esq., for MRP)

³¹ *In re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated, Transcript*, at pp. 11-12 (statement of Ms. Carla G. Fox, Tennessee Regulatory Staff)

Authority's decision and final order in the decertification proceeding.³²

30. CAD acknowledged and adopted the issues in the Report and Recommendation of the Hearing Officer from the Pre-Hearing Conference held on September 17, 1998.³³ For the record the CAD also clarified that it believed that an additional statute, Tenn. Code Ann. § 65-21-114, was an implicit part of the issues filed by the Authority Staff.³⁴

31. The CAD stated that with reference to the November 24, 1998, hearing, it did not think that the Parties needed to delay discovery. CAD requested the Hearing Officer to recommend bifurcation on the issue of damages. No party objected to bifurcation. The Hearing Officer asked the Parties, if, for the purpose of decertification, whether or not they could continue with the discovery schedule set on October 6, 1998. MRP stated that it did not believe we could since the Parties were already past several of the cutoff dates such as prefiled direct testimony, briefs, and Pre-hearing motions. MRP stated that it did not see any way that the

³² *Id.*, at p. 16

³³ The Consumer Advocate stated:

I think that by having given Mr. Colley notice of those show cause issues and talked about how we think they're incorporated into those issues that you've already done, I don't think I have any further remaining issues with respect to that.

In *Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated.*, Transcript, at p. 49 (statement of L. Vincent Williams, Esq., Office of the Attorney General and Reporter, Consumer Advocate Division).

³⁴ The Consumer advocate stated:

One of the issues that I think implicitly goes to the evidentiary part and I think has already been implicated certainly in the complaints that are before that agency is [Tenn. Code Ann. §] 65-4-114. That is the county-wide calling statute. There are allegations by complainants before this agency that MRP did not adjust the toll free calling within a county. I think it may have in fact resisted adjusting for those. So that statute is the statute that all telecommunications service providers have to abide by. So there would be a question that would be presented into evidence with respect to that, but I think-- at the same time, it goes to the same sort of evidence that we already have in existence about some of this. *Id.*, at pp. 52-53

Parties could be ready for a hearing and be fair to both sides.³⁵

32. The Staff responded that while it appreciated the concerns stated by MRP about fairness and equity, the difficulty remained that although discovery responses were due from MRP on October 16, 1998, per the October 6, 1998 revised schedule, the Authority Staff to date had not received complete responses to its initial discovery requests. The Authority Staff emphasized that it attempted to work with MRP outside the context of a formal proceeding to give MRP the additional time to prepare the requested information, but as of the time of the Pre-Hearing Conference, the answers to the Authority Staff's discovery was not forthcoming. The Authority Staff further argued that there seemed to be unjustified delays on the part of MRP.

33. The CAD stated that it was very cognizant of the time schedule when it filed its Petition to Intervene in this case, and it consciously made decisions about how it could get in the case without interfering with the schedule. The CAD believed that it was important to keep the current Pre-hearing schedule and Hearing date.³⁶ The CAD further stated that the party failing to respond to discovery requests has no right to seek a continuance. Instead the party who has failed to receive discovery, in this case the Staff, has the right to ask for a continuance.³⁷ The Staff did not request a continuance. The Staff added that it had been attempting to give MRP all of the time necessary for them to produce responsible answers to discovery, but that MRP should

³⁵ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated*, Transcript, at pp. 16-17 (statement of Mr. Jerry C. Colley, Esq., for MRP).

³⁶ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated*, Transcript, at p. 17 (statement of L. Vincent Williams, Esq., Office of the Attorney General and Reporter, Consumer Advocate Division).

³⁷ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated*, Transcript, at pp. 18-19 (statement of L. Vincent Williams, Esq., Office of the Attorney General and Reporter, Consumer Advocate Division).

not use their own unresponsiveness to delay the proceedings.³⁸

34. The Hearing Officer directly requested the status of MRP's compliance with the discovery schedule requests from MRP and the need for the change in Hearing date from November until December as MRP proposed.³⁹ MRP considered it more fair and just to prepare a schedule that gives MRP more time. The Staff responded that MRP is the party in the best position to be able to move forward with the schedule because they are the ones who have the information sought by discovery.⁴⁰

35. The Hearing Officer found MRP's answer to be unresponsive and found that:

Between October 16 and today there were 19 days in which the discovery issue could be cleared up. Those were also days in

³⁸ Counsel for the Authority Staff stated:

We don't want there to be any attempt on the part of the company to use their delay in producing the information as a justification for delaying the hearing. I am agreeable to giving the company additional time if they need it for any --and I've been that way throughout this proceeding. However, there does come a point at which one has to say: If we're going to have a hearing, we have to stay on schedule. That means we have to produce a schedule that can be stuck to and all the parties have to adhere to it.

In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated, Transcript, at p. 17 (statement of Carla G. Fox, Tennessee Regulatory Staff).

³⁹ The Hearing Officer inquired:

My question to you Mr. Colley is: On October 6th, I met with the parties to discuss the procedural schedule at the direction of the Authority. The Authority wanted to be fair to Minimum Rate Pricing to ensure that you had sufficient time to perform your discovery, to do your responses, do your briefs, when necessary, and to construct your prefiled testimony.

Now, at that meeting, I can recall myself asking several time if these particular dates weren't just a little too close and you didn't think you needed a little extra time. At that time, you assured me that you could come in with the responses to the discovery on those scheduled dates. So my question is: October the 16th was the date the responses to discovery were due. It's 19 days since then. What has happened that should change my mind about changing the hearing date in relationship to that discovery?

In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated, Transcript, at pp. 22-23 (query of Hearing Officer, Dennis P. McNamee, Tennessee Regulatory Authority).

⁴⁰ *In Re. Tennessee Regulatory Authority v. Minimum Rate Pricing Incorporated*, Transcript, at p. 26 (statement of Carla G. Fox, Tennessee Regulatory Authority Staff).

which prefiled direct testimony with exhibits could have been constructed. The staff appears not to have the discovery that they requested, but MRP seems to have the requests that it made. The question is one here of balance and who is prejudiced in this matter?

36. The Hearing Officer directed MRP to file discovery responses by 12:00 noon (on the above date). Thereafter the Hearing Officer would rule on the Authority Staff's Motion to Compel. The Hearing Officer further reminded the Parties of his direction that any filing of Post-Hearing briefs be made two weeks after the entry of the transcript of the Hearing into the record. The Hearing Officer instructed those present that all filings, except discovery responses, would be due in the Office of the Executive Secretary of the Authority not later the 4:30 P.M.

37. Formal Hearings were conducted on November 24-25, 1998 and December 10-11, 1998, preceded by some additional responses by MRP to discovery.

38. In its Post Hearing Brief, CAD argued that the evidence showed that MRP violated numerous agency rules, as well as Tenn. Code Ann. § 65-4-125(a) and (b). In particular CAD contended that MRP has violated Tenn. Admin. Rule 1220-4-2-.56 (1) (c)-(e); (2) (c); (3); (4); and (5). Moreover, CAD argued that the evidence proved that MRP violated Tenn. Admin. Rule 1220-4-2-.57 (5)(d); (6); (11); (14); and (16).

39. The Authority's Staff Post-Hearing Brief reiterated the allegations raised in the Authority's Show-Cause Order. It also referenced various portions of the transcript testimony, as well as pre-filed testimony and other evidence from the record demonstrating how MRP had failed to satisfy its statutory burden of demonstrating why the allegations raised against it should not result in the revocation of MRP's CCN.

40. MRP failed or refused to submit a post hearing brief.

DISCUSSION

41. We begin our discussion by identifying a sampling of the complaints the agency received. We also utilize some of the relevant and significant testimony, including testimony offered by MRP in an apparent effort to meet its burden of proof.⁴¹

42. Ms. Lea R. Valentine complained to the Authority that “the MRP solicitor represented himself as an, “A.T.&T. Affiliate”.”⁴² We find that MRP is not an affiliate of AT&T and such a representation is misleading and deceptive.

43. Complaint of Dan Hively to TRA, #97-0596 states that “MRP called him and said they were calling for AT&T. He was told that the FCC determined that the other major companies were charging too much for long distance calls and they have a computer that computes the charges for other companies and they can offer a twenty-five (25) percent discount”. Mr. Hively did not receive the promised discounts and MRP acknowledges that its charges are not always 25% less than AT&T.

44. The Authority finds that MRP is not an affiliate of AT&T and such a representation is misleading and deceptive. We further find that representing, expressly or by implication to a particular consumer that a particular telecommunications service is available at a rate that is less than the rate that particular subscriber is paying to his or her current carrier for such service is unlawful, unless MRP first ascertains the subscriber’s plan with his or her current carrier and has a reasonable basis to make such representation. Absent particular subscriber

⁴¹The authority also listened to tapes produced to MRP. The tapes are consistent with our opinion herein.

⁴² (complaint of Lea R. Valentine to TRA, #97-0251 dated 2/14/97)

information, MRP may only represent its applicable rate and any comparison shall be limited to a comparison between such rate and a prevailing basic rate offered by one or more dominant suppliers of such service.

45. We also find that failing to clearly and conspicuously provide accurate and complete information about material terms and conditions of the offer, including but not limited to, limitations and restrictions related to discounts to be provided is misleading and deceptive and a violation of the Authority's Rules. The failure to accurately disclose material information to consumer means that no actual agreement existed and either knows or reasonably should know that no actual authorization by the subscriber is given based on actual terms and conditions of service.

46. MRP did not present witnesses, with personal knowledge to controvert any complaint made to the Authority.

47. The Testimony of Ronald Ray Highsmith indicates fraud or deception, on the part of MRP or its telemarketer. Mr. Highsmith testified:

(Vol. I, p. 68) ...they [MRP] were supposed to provide voice capture or written authorization for changing my long distance carrier. They then provided some sort of voice capture from some fellow that is 400 miles away from where I live and work. All of the while they have continued to insist that myself or someone else at my business changed one of a few phone lines.

(Vol. I, p. 72, 73) Well, Minimum Rate Pricing told me that Wesley Moore had authorized the change of my telephone long distance carrier. I explained to the Tennessee Regulatory Authority that I had no Wesley Moore work for me nor had I ever had any Wesley Moore ever work for me.

(Vol. I, p. 75) "It is true one of our phone lines is mentioned and the individuals talking do mention our phone number 423-272-6003 of course, this conversation did not take place at our business. Mr. Moore gives his home address in

Somerville, Tennessee, 400 miles away in the area code of 901. After checking, we found that there is a Spring Street in Somerville but the numbers start with 800 and there are no numbers as low as 18,” which is the address that Mr. Moore gives on this voice capture tape.

48. Mr. Highsmith is a business owner who came hundreds of miles to present live testimony to the authority in this matter. Like all of the other we find him and all of the other consumer witnesses, Mr. Highsmith’s testimony is credible. Furthermore, we listened to MRP’s supposed tape of Mr. Highsmith and conclude that the voice of the customer on the tape is not Mr. Highsmith. We therefore find that MRP violated Tenn. Admin. Rule 1220-4-2-.56 by failing to receive Mr. Highsmith’s oral authorization or request to change service. We further find that MRP knew or reasonably should have known that Mr. Highsmith did not authorize a change in his service.

49. The Authority’s Staff Contends⁴³ that MRP either has or is violating Authority Rule 1220-4-2-.13(3) by failing to timely conduct a full and prompt investigation of complaints made by its customers and for failing to timely reply to the Authority’s Staff with sufficient evidence to demonstrate MRP’s compliance with Authority Rule 1220-4-2-.56.⁴⁴

50. In this regard the Pre-Filed Direct Testimony of Eddie Roberson states at (pp.3,4):

Q. How is MRP’s record on complying with TRA Rule 1220-4-2-.13(3)?

A. I consider repeated delays of twenty (20) or more days an egregious violation of the TRA Rule. MRP failed the twenty (20) day test on sixteen (16) complaints, which represents twelve (12) percent of MRP’s total complaints. I am unaware of another utility with a similar dismal compliance record. In my view, this level of

⁴³ Presented by the Hearing Officer from the Authority Staff for Hearing by the Directors at the Pre-hearing Conference on September 17, 1998.

⁴⁴ Tenn. Admin. Rule 1220-4-2-.13(3) provides: Each telephone utility shall within ten (10) working days, after receipt of a complaint forwarded by the Commission, file a written reply with the Commission.

repeated violations of Rule 1220-4-2-.13(3) justifies strong enforcement action by the TRA. Exhibit A to my testimony is a list of these sixteen (16) complaints with the number of days it took MRP to respond to the TRA.

51. MRP's response to this allegation is not one of denial, but one of unjustified excuses. MRP's Pre-Filed Rebuttal Testimony of Drew Keena (p.3) provides:

Q. Why is MRP occasionally delayed in responding to the inquiries of the TRA?

A. MRP provides telecommunications services to many thousand of customers around the country. In its effort to satisfy its customers to the best of its abilities, and work in a partnership with state and federal regulatory agencies, MRP attempts to respond to all inquiries in as timely a manner as possible. It is a time-consuming process to research the file of a subscriber and find his or her tape in a warehouse containing millions of tapes. Additionally, MRP is often delayed by its attempts to reach the subscriber and discuss the subscriber's concerns. Nonetheless, although it attempts to respond as quickly as possible and within the regulation's time limits, such a goal is occasionally impossible to achieve. Furthermore, the TRA cannot show that MRP was twenty calendar days late on these sixteen complaints. Mr. Roberson is simply incorrect about at least one of the complaints referenced in the TRA's Exhibit A. See letters relating to complaint of Jorge Garcia, attached as Exhibit 23. In the case of Mr. Garcia, according to the stamp on the document, the TRA received the response of MRP only 18 calendar days after the TRA sent its letter to MRP. Additionally, the TRA has provided no documentation to establish the salient dates for Kenneth Kaylor or Carole Flint.

Although it regrets that it was delayed in responding to the thirteen documented complaints referenced by Mr. Roberson, those complaints represent only 13 of the 132 complaints the TRA asserts it received in the last two years. Given the large number of customers in Tennessee, the fact that MRP was late in responding to a very small number of their complaints certainly seems an unjust reason to revoke MRP's certificate of authority. Finally, it is notable that MRP either reimbursed or offered reimbursement to the individuals in every one of the documented complaints referenced by Mr. Roberson.

MRP's response is not a denial nor does it present valid reasons for its failure to respond. The Authority therefore finds that MRP violated Tenn. Admin. Rule 1220-4-2-.13 (3).

52. MRP has failed to satisfy its burden of proving that its "welcome packet"

procedure complies with the requirements of Authority Rule 1220-4-2-.56(1)(d).⁴⁵ MRP has also failed to demonstrate that a valid request was obtained prior to MRP's submission of a welcome packet to numerous consumers.

53. On this issue, there are no material facts in dispute. The complaints of many Tennessee consumers arise on the ground that MRP switched the consumers long distance service provider without permission or consent. MRP, on the other hand, argues that either (1) a mistake was made by MRP employees in data entry; or (2) a valid request for a carrier switch was made, regardless of whether the complaining consumer intended to "request" the carrier switch and (3) the customer still had a chance to refuse service by sending back the card in the "welcome packet" which canceled their service.

54. MRP sought at the hearing to impeach the testifying consumers by playing a voice capture of what was supposed to be the consumer's voice and to attempt to prove that the consumer actually "requested" a change in telecommunications services or a PIC switch during the conversation with MRP's "verification" staff.

55. The evidence introduced in this matter demonstrates that on an overwhelming level, consumers never actually "requested" a change in service provider prior to being referred to MRP's "verification" Staff. Thus, MRP's verification tapes are insufficient proof. We find that the tapes support the consumers, Authority Staff, and CAD's positions that consumers never authorized or requested MRP to change their service. We further find that the tapes, scripts and testimony shows that MRP either did not seek a customer authorization or request and that MRP

⁴⁵ Post-Hearing Brief of The Authority's Staff, pp. 9-11

knew or should have known that it did not have customer authorizations to change their service.

56. The Authority rejects any MRP defense premised on the number of complaints as opposed to its number of customers because our rules establish *malum prohibitum* conduct.

When MRP fails to follow the rule there is a violation whether or not any particular customer makes a complaint.

57. With regard to MRP's switching practices, former U. S. Navy Captain, George M. Helm testified:

Question by Ms. Fox:

(Vol. I, p. 247) Did you understand what was communicated by the MRP representative and what's being asserted by counsel today is that you were giving authorization for a switch in your service?

A. I did not believe I was giving authorization to switch my service. I thought my original comment of "You can send the cards, but I'll probably never use them" stood.

By Chairman Malone:

Q. Did you understand by saying they can send me some phone calls; I'll probably never use them- did you understand that comment from you to affirmatively authorize MRP to switch your long distance carrier? (Vol. I, p. 248)

A. No, sir. I thought that left me the option to use it whether I wanted to or not.

By Chairman Malone:

Q. And you thought your long distance carrier would remain?

A. Correct, sir. (Vol. I, p. 249)

By Chairman Malone:

Q. When you talked to the second person as demonstrated on the tape that

was played, what did you think was being discussed in that entire conversation? (Vol. I, p. 249)

- A. I thought the original conversation was being elaborated on, and I probably didn't pay close enough attention as to what I was agreeing to.

By Director Greer:

- Q. What did you understand it to mean when the lady said to you, We'll send you the phone cards without any surcharges? What did you understand that to mean: I believe the exact word they used was surcharge. (Vol. I, p. 250)

- A. I don't know that it meant anything to me at the time. I just assumed I wasn't going to be changed anything. And when I did received the cards, I stuck them in a drawer in the desk.

Question by Ms. Fox: (Vol. I, p. 251)

- Q: In the tape you authorized two phone cards without any surcharge and Mr. Witterman (phonetic) asked you whether you believed that your conversation was about the phone cards. Do you have any comment with respect to that?

- A. I believe she asked me did I want one card or two. I said two; I suppose my wife would want one. Here again, we didn't use either of them. I stuck them in the desk.

Question by Ms. Fox: (Vol. I, p. 251)

- Q: And the last question is with respect to the welcome package. On the tape, the person said the welcome package guarantees your customer satisfaction or something of that nature. I had asked you previously, and I think there also was a question from counsel, regarding whether you had the opportunity to respond.

- A. To the best of my recollection, we never received any further written communications with the company.

58. The testimony of Army Chief Warrant Officer Nikolas B. Kubli is similar:

(Vol. I, p. 187) ... I called the number that they (BellSouth) gave me for Minimum Rate Pricing. I spoke to a lady there to ask her why my service had

been changed without my consent, and her statement was that the--the we had consented and said yes, we want your service, and they had switched our service. When I explained to her that no, we had not consented for their service in any way, shape or form, she said that I should have sent the little postage paid card back to them stating - which actually at the bottom it said, "I have changed my mind. Please cancel my order." She said that I was supposed to have sent this back in if I did not want their service.

(Vol. I, p. 188) After looking over and trying to figure out what was happening here, I was in shock this was even happening. When I talked with Minimum Rate Pricing or when they talked to us, we discussed their offer. I did not say I wanted their service and I did not give them permission to change my service. What the lady was saying on the phone that I was talking to was that I had to send this card back in. Now, right there- and it said that I've changed my mind. Well, I never did change my mind. I had never placed an order with them. It does say please cancel my order. Well, I can't cancel an order that I did not make.

... I did receive the one packet and looked at it quickly and decided I didn't want it and put it off to the side. I have no responsibility to respond to an

information packet. Although later I was told that that was my confirmation packet, and I had to respond. It cannot be a confirmation packet unless- I mean, there's nothing to confirm. I never made an order, so it is not a confirmation packet.(Vol. I, pp. 188-189)

(Vol. I, pp. 190-191) As I've already addressed, this card at the bottom says I've changed my mind; please cancel my order. Neither one of those statements are correct. So what Minimum Rate Pricing said on this return letter

(Vol. I, p. 191) to me is not correct. They do not apply here. If I had actually said yes, I want your service and later changed my mind, then, yes, it would have been appropriate for me to send this card in, and I would have done so because I would have been responsible for doing that. But I never made that order. Also in the statement it said that my wife had authorized the switch to their service.

59. We find the testimony of Tennessee consumers that they neither authorized nor requested MRP to switch their service persuasive.

60. MRP's definition of what constitutes a "request" or "authorization" is inconsistent with the Authority Staff's definition of "request." The proper interpretation of what constitutes a

“request” is the single most material issue affecting the question of MRP’s compliance or noncompliance with Authority Rule 1220-4-2-.56(1)(d)

61. Generally, Authority Rule 1220-4-2-.56 concerning Verification of Orders for Changes in Long Distance Carriers requires that primary interexchange carrier (PIC) orders not be submitted by resellers except in accordance with certain specifically delineated procedures. While the parties disagree over whether MRP has either sought to or been successful in using the verification procedure described in Authority Rule 1220-4-2-.56(1)(c), MRP has asserted that it seeks to demonstrate compliance with Authority rule 1220-4-2-.56 by proving its valid use of the “welcome packet” procedure described in Authority Rule 1220-4-2-.56(1)(d). Giving MRP the opportunity to so demonstrate was a principal purpose for the hearing.

62. It is undisputed that the “welcome packet,” when properly utilized, can satisfy the requirements of Authority rule 1220-4-2-.56(1)(d). MRP’s only proof tendered on this issue was the testimony of Mr. Drew Keena. Mr. Keena’s testimony confirmed that MRP uses a “verification script” that (1) tells the consumer that he/she is requesting a switch and (2) requests affirmative responses from such consumer to the following questions:⁴⁶

1. Do you have the authority to approve the discounted service change to Minimum Rate Pricing?
2. Do you understand that Minimum Rate Pricing will be selecting your underlying carrier either At&T, MCI, Sprint, or Wiltel to ensure your 25% discount?
3. Do you understand that Minimum Rate Pricing, Inc. Is not

⁴⁶ MRP used at least two verification scripts during the period in question. The exact language of these two scripts may vary slightly, but they appear to be substantially similar.

affiliated with your local telephone company?⁴⁷

63. Nor does the, "Solicitation Script" satisfy the Authority's requirements, and it seems illogical that there can be any, "verification" if there has been, no "request" for a PIC switch Mr. Keena's testimony⁴⁸ in response to a question by Chairman Malone,

Q. You stated in response to Ms. Fox's last question that the solicitation, which I will call the first call, very rarely results in a sale.

A. Right

64. The difficulty in understanding how MRP justifies a switch (to be verified later) can be evidenced in this exchange between Mr. Keena, Chairman Malone and Director Greer⁴⁹:

(Vol. II, p. 398) Chairman Malone: And just to help me understand what we're talking about here, Exhibit 4 to your testimony -- is that the script of the first call?

Mr. Keena: Let me just get there. (Pause.) Yes.

Chairman Malone: And just so I understand more clearly how this process works, is there anything in this -- this is all that the first MRP representative covers --this is the telemarketer?

Mr. Keena: Right

Chairman Malone: Right

Mr. Keena: Right

⁴⁷ Mr. Keena's pre-filed direct testimony attempts to buttress MRP's argument by stating: "In later scripts consumers are asked an extension of [this] question in the following manner "Do you understand that Minimum Rate Pricing, Inc. long distance is not affiliated with your local or your long distance telephone company? See Exhibit 4 [to Keena's pre-filed testimony]. This question further emphasizes the separation between MRP and the customer's current carriers."

⁴⁸ Chairman Malone to Mr. Keena, Transcript November 25, 1998 Volume II, pp. 397, and 398

⁴⁹ Transcript November 25, 1998 Volume II, pp. 398 - 402

Chairman Malone: The person hired out by MRP?

Mr. Keena: Right

Chairman Malone: And this is all the information that the telemarketer relates to the potential customer? This is the entire conversation?

Mr. Keena: That's right. Absent some question from the customer that might result in extra verbiage, this is the entire script that they are presented with to solicit to the customer.

Chairman Malone: Is there anything in this script that asks the customer in any way if he or

(Vol. II, p. 399) she wants to change their service?

Mr. Keena: Yeah. Well, I think -- I'm sorry. Just so I understand your question, are you asking if that word-for-word question is in here or if that --

Chairman Malone: Paraphrased, whatever you think does it.

Mr. Keena: I think there's a couple of places. On the very top after, "I'm an account representative with Minimum Rate Pricing..." it says, "I need to speak with the person in charge of long distance telephone switching authorization." So I think that--

Chairman Malone: "That's the first place you identified --

Mr. Keena: That we're talking about telephone switching. In the second paragraph it says on the third line down, middle, "...on your interstate -- "...consumer discount on your interstate calling by switching to our new 15 cent per minute long distance service."

Chairman Malone: Okay. Consumer discount on your interstate switching.

Mr. Keena: Calling by switching to our service.

(Vol. II, p. 400) Chairman Malone: "...to our new 15 cent per minute long distance service"?

Mr. Keena: Right

Chairman Malone: Okay.

Mr. Keena: Then in the last paragraph at the bottom in the third line down, the first full sentence in the third line, it says, "Now all I need to do to activate your blank cents a minute plan and switch you to Minimum Rate Pricing carrier services will be to verify the information we just went over. We will be taping your order and new carrier selection for accuracy..."

Chairman Malone: And then it says, "Now, do you have any questions before we begin?" Is there any -- there's no question here for the potential customer; is that correct?

Mr. Keena: I'm sorry. There's no question?

Chairman Malone: The last sentence you read, "Now, all I need to do to activate your blank a minute plan and switch you to Minimum Rate Pricing carrier services will be to verify the information we just went over. We will be taping your order and new carrier selection for accuracy, please let us know if the information we have is correct, it will only take a

(Vol. II, p. 401) minute." Is that the sentence you read?

Mr. Keena: Yes.

Chairman Malone: That's not a question, is it?

Mr. Keena: No, sir.

Chairman Malone: And there's no question after that on the script?

Mr. Keena: Besides do you have any questions.

Chairman Malone: "Now, do you have any questions before we begin?" That is -- that question is not -- that question speaks for itself. So you've identified three places where -- my question was is there anything in this script that asks the person if they want to switch their service, and you've identified three places that kind of fall in that category; correct?

Mr. Keena: Correct.

Chairman Malone: Is there anything else on this script that falls in that category?

Mr. Keena: In the data gathering box, which is right above the last paragraph, it asks, "Who is your current carrier we'll be switching you from?"

Chairman Malone: All these questions

(Vol. II, p. 402) are read?

Mr. Keena: Right

Ms. Fox: Chairman, I just want to clarify that all of those -- you asked if all of them were read. Obviously, he has testified that he doesn't know whether they are actually said or not, and certainly to the extent that additional questions are interjected --

Chairman Malone: I understand. I'm just kind of going over the document with him. So that's the fourth area that you've identified. Any others you want to identify?

Mr. Keena: Oh, I did miss one. In the paragraph that's titled "Why" right above the competitive rating discussion section --

Chairman Malone: I'm with you.

Mr. Keena: The second sentence it says, "However by switching to MRP, Inc. Long distance..."

Chairman Malone: Okay. So you have identified five. Any others you want to identify?

Mr. Keena: I think that's all of them.

Chairman Malone: Okay, Now, the first one you identified is, "I need to speak to the person in charge of long distance telephone switching authorization," Does the answer to that question authorize MRP to switch telephone service?

Mr. Keena: I don't believe so.

Chairman Malone: The second one you identified, "...consumer discount on your interstate calling by switching to our new 15 percent (sic) per minute long distance service." Let me read the entire sentence. "As a credit selected long distance user, you have now been pre-approved by

MRP for up to 50 percent consumer discount on your interstate calling by switching to our new 15 percent (sic) per minute long distance service.” That the second area you identified: is that correct?

Mr. Keena: Right

Director Greer: Mr. Chairman, I believe that’s 15 cents and not 15 percent.

Chairman Malone: 15 cents, that’s right. That’s the second area you identified?

Mr. Keena: Yes.

Chairman Malone: Is that a question?

Mr. Keena: No, sir.

Chairman Malone: Does that authorize a potential customer to switch service?

Mr. Keena: That line by itself

(Vol. II, p. 403) does not, no.

Chairman Malone: Does that line taken with the first area you identified do it?

Mr. Keena: I wouldn’t say so.

Chairman Malone: The third area you -- I’m taking these in the order they appear on the script. You may have identified them differently than that.

Mr. Keena: Yes, sir.

Chairman Malone: The third area appearing on the script that you have identified, “However by switching to MRP, Inc. long distance a blank flat discount rate will be available to you for interstate, intrastate, and local toll/regional calls.” Is that the third area you identified?

Mr. Keena: Yes.

Chairman Malone: Is that a question?

Mr. Keena: No, it’s not.

Chairman Malone: Would that be accurately described as information to a customer if a customer -- the benefits a customer would get if they decided to switch their service?

Mr. Keena: Yes.

Chairman Malone: The fourth area you have identified, "Lastly, who is your current carrier

(Vol. II, p. 405) we'll be switching you from?" That's in the form of a question.

Mr. Keena: (Witness moves head up and down.)

Chairman Malone: Could that question be appropriately characterized as the carrier we will be switching you from if you chose to switch?

Mr. Keena: I would take it that you're asking the person whose carrier they're going to be switched from if -- I mean, if we meant by that should you decide to go with this, I mean, we would have added that in there. At that point -- at this stage, though, we're asking them who is the carrier that we're actually going to be switching you to MRP from.

Chairman Malone: And I'm not attempting to say what you meant. I'm just trying to understand the script.

Mr. Keena: Sure

Chairman Malone: Prior to this question appearing in the script, has the potential consumer -- assuming the telemarketer follows this script verbatim, has the potential

(Vol. II, p. 406) consumer given authorization to have his or her service switched?

Mr. Keena: Prior to that, I wouldn't say so.

Chairman Malone: Are you unclear or you think absolutely prior to that they haven't given --

Mr. Keena: I don't

Chairman Malone: If the script is followed --

Mr. Keena: Yes.

Chairman Malone: --and answers are only provided when questions are asked, can you show me something prior to that fourth question where a potential customer has agreed to have their carrier switched?

Mr. Keena: I can't show you anything previous to that.

Chairman Malone: Okay. Ms. Fox?

Director Greer: Mr. Chairman. Then in order -- if you come back and ask the question or make the statement that you highlighted, "We will be taping your order and new carrier selection for accuracy, please let us know if the information we have

(Vol. II, p. 407) is correct, it will only take a minute." Period. It's not a question. And you go back and ask me to verify all of the information in that box. I'm assuming that's what you are going to verify?

Mr. Keena: Right.

Director Greer: So in order for me not to take this service I have to say I am not willing to verify that information; is that --

Mr. Keena: Yeah. At the stage that you just read it would -- it would continue to verification.

TRA Rule 1220-4-2-.56(1)(a-d) violations:

65. Pre-Filed Direct Testimony of Eddie Roberson (pp.7,8)
Q. How has MRP violated 1220-4-2-.56(1)(a-d)?

A. Rule 1220-4-2-.56(1)(a-d) outlines four methods to switch a consumer's long distance service. These four methods form the bedrock or foundation , to prevent slamming. Strict adherence to one of these methods will prevent consumers from being slammed. The four (4) methods are:

1. Obtain a signed letter of agency ("LOA") from the customer;
2. Accept a consumer-generated request for change via an automated 800 number;

3. Obtain a consumer's oral authorization to a long distance provider telemarketer, and verify such authorization by an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative; or

4. Obtain a customer's oral authorization by a telemarketer, and, within three (3) days of the customer's request for a PIC change, the long distance company provide a "welcome package" which must contain specific information concerning the requested change, including the rights of the consumer to deny, cancel or confirm the service order.

66. This last method is sometimes referred to as a "negative option" because it puts the burden upon the consumer to sign and return a postcard if they wish to deny the service. MRP acknowledges that it relies upon this negative option method to verify telemarketing sales in Tennessee. (MRP Reply to Initial Show Cause Order, p 6).

67. Options 3 and 4 are associated with telemarketing sales and outline specific verification procedures designed to ensure that the customer is aware and wants his or her service changed. Both of these methods are contingent upon the consumer giving the company telemarketer either oral authorization or the consumer must request a change in his or her PIC. The numerous complaints filed against MRP during 1997 and 1998, the tapes provided by MRP and the testimony by all witnesses and evidence that MRP should have known of its problems show that MRP knowingly violated statutes and the rules of the Authority. A long distance company cannot use either method 3 or 4 to verify change orders where the consumer did not authorize or ask the telemarketer to change PIC's. The complaint of Dan and Linda Ford (97-1172) is a clear example of how MRP has violated TRA Rules on the switching of long distance service. Both Dan and Linda Ford categorically deny ever giving anyone from MRP permission to switch their long distance provider. They do acknowledge that they received a call from MRP

and were asked several questions, but MRP did not ask them for permission to change their long distance service nor did they request MRP to change their service. The Ford's deny ever receiving any mail from MRP. Evidence indicates that MRP slammed the Fords."

68. The record does not support MRP's contention that it is cleaning up its act in Tennessee. We find the testimony of all consumers who appeared credible. In the complaints of Mark Hogan (98-1035), Brenda Thompson (98-1088) and Mr. and Mrs. Igor Popovic (98-1624), each consumer contends that they simply requested information and was sent a "welcome package" from MRP. Each person stated that they mailed in the postcard within the required fifteen (15) days indicating they did not want MRP service, but was still slammed. These three (3) complaints reveal MRP's non-compliance with TRA Rules, and that its behavior in Tennessee has not improved since the issuance of the TRA's Show Cause Order in this proceeding.

69. Testimony of Chief Warrant Officer Nikolas B. Kubli Vol. I, 11/24/99:

(Vol. I, p. 187) ... I called the number that they (BellSouth) gave me for Minimum Rate Pricing. I spoke to a lady there to ask her why my service had been changed without my consent, and her statement was that the--the we had consented and said yes, we want your service, and they had switched our service. When I explained to her that no, we had not consented for their service in any way, shape or form, she said that I should have sent the little postage paid card back to them stating - which actually at the bottom it said, "I have changed my mind. Please cancel my order." She said that I was supposed to have sent this back in if I did not want their service.

(Vol. I, p. 188) ... I did receive the one packet and looked at it quickly and decided I didn't want it and put it off to the side. I have no responsibility to respond to an

(Vol. I, p. 189) information packet. Although later I was told that that was my confirmation packet, and I had to respond. It cannot be a confirmation packet

unless- I mean, there's nothing to confirm. I never made an order, so it is not a confirmation packet.

70. Cross Examination Testimony of Drew Keena November 25, 1998

By Chairman Malone:

Question: You stated in response to Ms. Fox's last question that the solicitation, which I will call the first call, very rarely results in a sale

A. Right (Vol. II, pp. 397, 398)

71. Cross Examination Testimony of Drew Keena December 10, 1998 (Vol. III, p.

681) Question by Mr. Williams:

...Do you-- it is your position on behalf of MRP that if a customer tells you that I just need to see it in writing before I make a decision that they have to say something else-- they have to be adamant about not seeing it in writing in any, way, shape, manner, and that you not make a shape before it -- you won't follow through with the process an switch?

A. It's our position that a customer that asks this question or makes this comment is going to receive a response, and if they continue through the entire verification process, then they have an understanding that their carrier is being changed and they are going to have an opportunity to look at written information prior to the carrier change and that they have a cancellation period.

By Director Greer:

Q: But they're not making an order. That's my question. The customer -- we heard two or three people testify they weren't placing an order. You heard more than one person say I want to see the information and yet your comments right here -- your program response is, "if you have any problem with what you receive in writing, just call in and cancel within 14 days to prevent order processing." You have just put their order in pending them taking some kind of affirmative response that they do not want the service, and they have to do that by mail. Correct? (Vol. III, pp. 677 & 678)

Question by Director Greer: (Vol. III, p. 678)

So the answer to his question is you do process their order and you do sign them up for new service to be effective in 14 days even if they do say I just need to see it in writing before I make the decision. Correct?

A. Yeah

Q. Yes or no?

A. Yes. May I clarify?

Q. You may explain then.

A. Thank you. What I was trying to point out is that this back and forth with the customer is part of an entire sales process, and when a person goes through the entire verification, even if this question is asked, there's an understanding that I am placing an order for long distance service and I'm -- I'm going to get it in writing and there's going to be a holding period, so I am placing an order as long as I have this review period and I'm going to be able to see it in writing before the change takes place.

So I think I would really like for the record to differentiate between a -- a blatant, Don't do anything, don't put me down for anything, I'm not verifying anything, just send me a brochure versus, Yeah, I'll proceed and I'll place an order as long as I have a chance to review it before the actual carrier change takes place. I just wanted to clarify that difference.

Director Greer:

Well, in two other places on the same page -- now, you are assuming that everybody understands you're talking about you're soliciting them for long distance business, but in two other places on here you say, I am offering you 60 free minutes of phone service, and again -- and that's under I am happy with my current long distance carrier. And down at the bottom under, "I don't make long distance calls," you state again that you are offering 60 minutes of free telephone service.

I'm going to have to tell you that would indicate to me I've got 60 minutes of free telephone service, whether it's local or long distance. You don't differentiate between a local and long

(Vol. III, p. 680) distance call. You can assume you are offering long distance service because you know what you're selling, but an unknowledgeable consumer cannot assume that. You are offering 60 minutes of free telephone service, and

you don't have the authority to offer free -- 60 minutes of free telephone service. That's the local -- their local carrier offering that. I think that's gross misrepresentation. You are welcome to respond to it.

A. That's -- that's probably true, but we still are offering 60 free minutes, so I don't think the statement is untrue

(Vol. III, p. 681) because we are -- we did offer 60 minutes and sent them a coupon that said they could take advantage of that.

Question by Mr. Williams: (Vol. III, p. 662)

Now, on the letter -- I think it's been identified -- let me get to it -- as Exhibit B to Mr. Roberson's testimony, it has part of D, and let me read it to you. It says, Within three business days of the customer's request for a PIC change, the IXC or reseller must send each new customer an information packet by first class mail containing at least the following information. What I'm asking -- what we're talking about right now is the customer's request and you -- MRP cannot prove that the customer ever made a request, can they?

A. No carrier that ever telemarkets could make that claim.

72. MRP, Inc.'s Pre-Filed Direct Testimony of Drew Keena p. 4 further demonstrates the point, as follows:

Q. Is MRP also required to use independent third party verifiers in addition to utilizing the "verification: package?"

A. No. MRP chose not to use the independent third party verification method. MRP satisfies its regulatory requirement through use of the "verification: package, so additional verification done by MRP is purely for the company's internal goal of attempting to increase customer satisfaction and for monitoring the individuals telemarketing for MRP.

73. MRP violated Authority Rule 1220-4-2-.56(1)(d) by establishing a "negative option" procedure in the absence of a customer's actual request and by failing to provide each customer with a timely information package that contains a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week,

along with the name of the person ordering the change, and clear information pertaining to MRP's practice of automatically switching a customer's long distance until the customer directly notifies MRP of its desire to change long distance service providers. Testimony supporting this finding is as follows:

Question by Director Greer: (Vol. III, pp. 677 & 678)

But they're not making an order. That's my question. The customer -- we heard two or three people testify they weren't placing an order. You heard more than one person say I want to see the information and yet your comments right here -- your program response is, "if you have any problem with what you receive in writing, just call in and cancel within 14 days to prevent order processing." You have just put their order in pending them taking some kind of affirmative response that they do not want the service, and they have to do that by mail. Correct?

Question by Director Greer: (continued) (Vol. III, p. 678)

So the answer to his question is you do process their order and you do sign them up for new service to be effective in 14 days even if they do say I just need to see it in writing before I make the decision. Correct?

A. Yeah

74. The testimony of Chief Warrant Officer Nikolas B. Kubli similarly confirms MRP's violation of Authority Rule 1220-4-2-.56(1)(d) and Tenn. Code Ann. § 65-4-125(a).

Warrant Officer Kubli testified:

(Vol. I, p. 187) ... I called the number that they (BellSouth) gave me for Minimum Rate Pricing. I spoke to a lady there to ask her why my service had been changed without my consent, and her statement was that the--the we had consented and said yes, we want your service, and they had switched our service. When I explained to her that no, we had not consented for their service in any way, shape or form, she said that I should have sent the little postage paid card back to them stating - which actually at the bottom it said, "I have changed my mind. Please cancel my order." She said that I was supposed to have sent this back in if I did not want their service.

(Vol. I, p. 188) ... I did receive the one packet and looked at it quickly and decided I didn't want it and put it off to the side. I have no responsibility to respond to an

(Vol. I, p. 189) information packet. Although later I was told that that was my confirmation packet, and I had to respond. It cannot be a confirmation packet unless- I mean, there's nothing to confirm. I never made an order, so it is not a confirmation packet.

75. MRP either has or is violating Authority Rule 1220-4-2-.56(1)(e) by apparently failing to maintain all "evidence of change orders for one year for dispute resolution." Moreover, MRP admits that it can not prove that any customer made a request during the solicitation.

During cross-examination Mr. Keena testified:

By Mr. Williams: (Vol. III, p. 667)

Q. Do you have any records, Mr. Keena, during the solicitation?

A. The question is do I have records of what happened during the solicitation?

Q. Yes

A. No

Q. Do you have personal knowledge during the solicitation that any of these persons made a request during the solicitation that were attached to the show cause order?

A. No

76. MRP either has or is violating Authority rule 1220-4-2-.56(2) by either failing to or by making misleading and deceptive mandatory disclosures to consumers when seeking to change a customer's PIC. During cross-examination Mr. Keena testified:

Q. Now, is that rate 25 percent less than AT&T's rates for directory assistance calls? (Vol. III, p. 610)

Mr. Keena:

A. I'm not certain

Q. Isn't it true that MRP represents in its scripts that rate is 25 percent less than AT&T's calls?

A. For the long distance calls, yeah.

Q. I'm talking about interstate -- you said that the script does not limit it to -- to any particular AT&T-type call, does it?

A. There's no specification to type of call.

Q. You say that -- but isn't -- doesn't the script say that you beat AT&T rates by 25 percent?

A. It says we compare the basic rates of AT&T, and directory assistance calls are included in the basic rates of AT&T.

Q. Now, do you have a copy of your script in front of you?

A. No, I don't

Q. But it's your testimony that the -- that the script says that the 25 percent savings is only on AT&T's basic service rates?

A. My memory of the script is that's correct.

(Vol. III, p. 615) Q. ... On Exhibit No. 15 -- and this script -- and the pages aren't numbered. Let me see if I can count the pages. On my copy it's the second -- up in the top right-hand corner it has "Residential and Commercial." Is this the second -- in fact, it's the first residential script. Look at the first residential script there.

A. Sure.

Mr. Dierks: Counsel, is that the one at the top that says "Residential-separate"?

Mr. Williams: Yes.

Mr. Dierks: Okay.

Mr. Keena: I have read through it.

By Mr. Williams:

Q: Is this a script that you participated in the development of?

Mr. Keena:

A. Yes.

Q. Does it limit itself to AT&T's basic rates?

A. In the second paragraph under the "Why," the fourth line down, it says "...automatically rate at

(Vol. III, page 616) 25 percent off the prevailing national carrier rates..." It's the only place that it references other carriers' rates.

Q. So it doesn't say basic rates?

A. Doesn't say basic, no. If you would look at the next script, the next page.

Q. You would agree that AT&T has a prevailing national rate for its directory assistance calls?

A. They have a directory assistance rate, sure.

Q. Would that be their prevailing rate? You would call that -- when you talked about prevailing rates in the other script, that would be what you were talking about, whatever AT&T was charging normally?

A. Yeah, we meant most commonly in use.

Q. Now, the next script, that would be what you were talking about, whatever AT&T was charging normally?

A. Yeah, we meant most commonly in use.

Q. Now, the next script, is there anything about AT&T's basic rates there?

A. No

Q. How about MCI's?

A. No

Q. Sprint's?

A. No

Q. So it wasn't through then that the -- that it was all -- that the script said -- anything in the script said was off of the basic rates of AT&T, MCI or

(Vol. III, p. 617) Sprint?

A. The script did not.

Q. Does any script say that?

A. I didn't review them all, but I mean not that I saw by looking at that.

Q. You developed the script for MRP. Did any script -- do you know what scripts that MRP brought -- submitted to the TRA?

A. Yes

Q. Did any of those scripts say that it was off of AT&T's basic rates?

A. There were quite a number of them. I don't know -- didn't actually commit them to memory. I don't remember seeing it, though.

Q. Did any of them say it was off of MCI's basic rates?

A. No, sir.

Q. How about Sprint's?

A. No

Q. So your testimony then is, therefore, interstate directory assistance calls that you did not give 25 percent off that or did not have a rate that was 25 percent less than AT&T actually?

A. I think I said I wasn't sure whether or not it was.

Chairman Malone: (Vol. III, p.618)

General Williams, are you referring on that first residential-separate script -- one, two, three, four, five -- are you referring to that fifth paragraph?

Mr. Williams: Yes

Chairman Malone:

What's happening is under FCC tariffs filed Minimum Rate Pricing compares the prevailing basic interstate rates of the major carriers, AT&T, MCI, and Sprint?

Mr. Williams: Yes

Chairman Malone:

Okay. I'm with you.

Mr. Williams:

In that second sentence, 25 percent off. So you don't know Sprint's rate either? You don't know -- do you know what MRP was charging in relationship to AT&T' directory -- interstate directory assistance rate?

A. No, I don't know.

Q. What was MRP charging for directory assistance in 1997 -- interstate directory assistance in 1997?

A. I'm not sure during that time period.

Q. What was MRP charging for interstate directory assistance in 1998?

(Vol. III, p. 619) A. I believe it was \$1.25 per call.

Q. Do you know what AT&T's rates were in 1998?

A. No, sir.

Q. But if -- but numerically speaking then you would accept -- what was that? A dollar what per call?

A. 25

Q. \$1.25 per call. So we could just do the math if we know what AT&T's basic rate -- AT&T's interstate directory assistance rate, can't we?

A. Math to do what?

Q. To see whether it's 25 percent less?

A. Yeah, sure.

Q. Now, did MRP increase its rate in 1997, interstate directory assistance?

A. I don't know.

Q. Who's in charge for MRP?

A. Well, I mean anytime -- anytime a -- any type of change in the marketing program, our rates would be contemplated. There would be a meeting on it generally. But I just -- I don't remember whether or not it was \$1.25 in 1997 or if it was less and it was increased. I'm really not sure.

Q. So it could have been the same?

A. It could have been the same, sure.

Q. Was it likely the same?

(Vol. III, p. 620) A. I don't know.

Q. Are rates always improved upon by 25 percent?

A. I think there have been cases where if a customer doesn't properly represent their current rate there might not have been a 25 percent savings, but based on customer representations, we would, yes.

77. MRP either has or is violating Authority rule 1220-4-2-.57(7)(a) and/or Authority rule 1220-4-2-.57(11) and Tenn. Code Ann. § 65-4-125(b) by billing consumers for intrastate directory assistance and telephone calls made between two (2) points in the same county in Tennessee because such charges exceed the maximum rates of the predominant LEC or IXC for

an equivalent call.

78. Rule 1220-4-2-.57(7)(a) provides: Any operator service provider whose rates are equal to or less than the maximum rates of the predominant LEC or IXC for an equivalent call, as defined in T.C.A. Section 65-5-206(1) and (2), shall be deemed just and reasonable. Any operator service provider that desires to charge a higher rate or utilize a different pricing method than the predominant LEC or IXC shall file appropriate cost justification for the proposed charge.

79. Rule 1220-4-2-.57(11) provides: In instances in which the Commission has ordered facilities-based carriers to provide toll-free service, all resellers shall also provide toll-free service.

80. During cross-examination of Eddie Roberson by Mr. Williams, Mr. Roberson testified:

By Mr. Williams:

Q. Is there any rule of the agency that provides for toll-free county-wide calling?(Vol. IV, p. 830)

Mr. Roberson:

A. Yes. As I state in my direct testimony, on line 86, 1220-4-2-.56(11) requires resellers to provide toll-free service where facility based carriers provide toll-free service.

Q. Was MRP, during the complaint process, informed of that rule and asked whether or not there was -- what was their -- and if so, what was their response to that?

A. Well, not only were they informed during the complaint process, but when they were -- when they obtained a certificate by the Authority, that was attached to the application that they received a copy of the reseller rules, and they signed on the last page -- an officer of the company -- that they had read and understood

the rules of this agency and that they would follow those rules. (Vol. IV, p. 830, 831)

Q. Now, when you communicated that again to MRP during the complaint process, did MRP admit that they violated that or had not honored the toll-free county-wide calling rule? Or did they deny it? (Vol. IV, p. 832)

A. Well, in the cases that I reviewed, they made adjustments. After we notified them that these charges were inappropriate, they would make adjustments of the charges.

Q. Was there any evidence from MRP -- did MRP ever present anything to the staff indicating that problem was not system wide within their billing system; it was not a normal problem in their billing system?

A. I believe Mr. Keena refers to that in his rebuttal, I believe. If I could have a minute, I could look, but I believe he refers to that.

Q. What do you recall about MRP's -- what do you recall about MRP's recognition of the -- of how extensive the problem was -- is? (Vol. IV, pp. 832, 833)

A. Well, from recollection -- to the best of my recollection, Mr. Keena states that the problem as a reseller is that they are -- that they use WilTel's network and that it is a problem he stated, that they could not remedy; that WilTel has made some adjustments in their billing systems where they don't bill for, I think, forty miles. There's a certain -- there's a certain distance that they don't bill for county-wide calls. That to the best of my recollection.

Q. Based upon the information that as you recall it from MRP, what would be your opinion about whether the problem -- that a problem may exist with respect to county-wide calling for other consumers who are not part of the show cause proceeding? (Vol. IV, p. 834)

A. Well, based on Mr. Keena's response, it indicates that they still may be billing some Tennessee consumers for county-wide calls.

81. In Minimum Rate Pricing, Inc's Pre-Filed Rebuttal Testimony, Mr. Keena testified:

Q. Does MRP charge a toll for intra-county telephone calls? (p. 4):

A. MRP makes a great effort to charge for the fewest number of intra-county calls

possible. MRP is aware that the Tennessee regulations prohibit intra-county toll charges based on the premise that facility-based carriers do not charge such tolls. MRP's most serious obstacle with regard to this issue comes from a facility-based carrier itself. WilTel, from which MRP buys its air time in Tennessee charges MRP for calls made outside of a 40 mile radius. WilTel does not determine its charges based on whether the origination and termination points are in the same or different counties. Accordingly, after WilTel sends its raw bills to MRP's billing company, the bills arrive at MRP and they contain no indication of whether the calls were-inter-county or intra-county. While MRP has no intention of circumventing the Tennessee regulation, and would welcome suggestions of how to deal with this issue, it also contends that it must find a way to address the tolls that are passed on by WilTel. Additionally, it is MRP's policy to reimburse subscriber's for charges they could not have incurred with MRP's service.

82. CAD ⁵⁰ contended that MRP, or its agents, or owners actions violate Tenn. Code Ann. § 65-4-125 in addition to the Authority's Rules.⁵¹ The Authority agrees.

83. With respect to the Authority's Rules MRP failed to show that it had the oral authorization of customers to submit PIC change orders. It also failed to show that customers requested a PIC change. Indeed when asked to show proof that a customer requested a PIC change Mr. Keena admitted that the company had no such proof. Transcript Vol. III, pp. 662-663, 667. In fact, nothing in its telemarketing script or "verification" process actually seeks "the customer's oral authorization" or shows "the customers' request for a PIC change." Mr. Keena states that it is MRP's position that a customer has made a request if the customer merely goes through its information gathering process. Their position is contrary to Authority's Rules and Tennessee Law.

84. For example, 1220-4-2-.57(1)(c) provides that the oral authorization "includes

⁵⁰ Amended Petition To Intervene by the Consumer Advocate Division of the Office of Attorney General State of Tennessee, pages 2,3.

⁵¹ Brief On Selected Issues And Request For Judicial Notice of U.S. supreme Court Decision, Consumer Advocate Division "Post Hearing Brief" files with TRA 02/02/99.

appropriate verification data.” The rule does not substitute verification data in lieu of oral authorization. See, e.g. testimony of Mr. Keena, Transcript Vol. III, at p. 673 (Once a customer finishes verification he has decided to switch.); and p. 681.

(Vol. III, p. 673) Mr. Keena: Once they finish the verification, they have. What we’re trying to get across in that response is to -- is to make the customer understand that there is a cooling- off period. They do have a window of opportunity to say I looked at it. I’ve confirmed that it’s what they said, and, therefore, I have no problem with it versus I looked at it and I don’t think that is what I said or what they said or what I understood it to be.

(Vol. III, p. 681) Mr. Williams: ...Do you -- it is your position on behalf of MRP that if a customer tells you that I just need to see it in writing before I make a decision that they have to say something else -- they have to be adamant about not seeing it in writing in any, way, shape, manner, and that you not make a shape before it -- you won’t follow through with the process and switch?

Mr. Keena: It’s our position that a customer that asks this question or makes this comment is going to receive a response, and if they continue through the entire verification process, then they have an understand that their carrier is being changed and they are going to have an opportunity to look at written information prior to the carrier change and that the have a cancellation period.

Our rules do not validate mere information gathering as being equivalent to actual oral authorization or an actual customer request.

85. Because MRP’s only evidence of compliance with the law is its script and the script does not ask for the customer’s authorization, and time after time MRP submitted PIC change orders even after the customers said they did not want to change during the call and they merely needed to see something in writing MRP violates both our rules and Tenn. Code Ann. § 65-4-125 (a). The evidence on this point is clear from testimony such as the following:

(Vol. III, p.678) Director Greer: ... so the answer to his question is you do process their order and you do sign them up for new service to be effective in 14 days

even if they do say I just need to see it in writing before I make the decision.
Correct?

Mr. Keena: Yeah.

86. The determination of the meaning of a statute or rule occurs through application of the ordinary rules of American grammar, syntax and punctuation unless such a determination is impossible. *Anderson v. Aluminum Co. of America*, 193 Tenn. 106, 241 S.W.2d 932 (1951). Where legislation or rules are free of contradiction and ambiguity, courts are not at liberty to depart from the words of the statute because of the justice of a particular case or supposed legislative intent. *Carson Creek Vacation Resorts, Inc. v. Department of Revenue*, 865 S.W.2d 1(Tenn. 1993).

. . . if [the legislative intent] is expressed in a manner devoid of contradiction and ambiguity, there is no room for interpretation or construction, and the judges are not at liberty, on consideration of policy or hardship, to depart from the words of the statute; that they have no right to make exceptions or insert qualifications, however abstract justice or the justice of a particular case may require.

Austin v. Memphis Publishing Company, 655 S.W.2d 146, 148 (Tenn. 1983), quoting *Heiskell v. Lowe*, 126 Tenn. 475, 153 S.W. 284, 290 (1912); see also Tenn. Code Ann. § 65-2-102 (a)(3).

87. The rules of the Authority at Tenn. Admin. Rule 1220-4-2-.56 provide in pertinent part:

(1) No interexchange carrier ("IXC") shall submit to a local exchange carrier ("LEC") a primary interexchange carrier (PIC) change order unless and until the order has first been confirmed in accordance with the following procedures:

(c) an appropriately qualified and independent third party operating in a location physically separated from the telemarketing representative has ***obtained the customer's oral authorization to submit the PIC change order*** that includes appropriate verification data (including the customer's date of birth or social security

number); or

(d) within three business days of *the customer's request for a PIC change*, the IXC or reseller must send each new customer an information package by first class mail containing at least the following information concerning the requested charge (sic)[change]:...

(e) All LOAs, recordings or other evidence of change orders shall be maintained for one year for dispute resolution.

88. The Authority must determine whether MRP or its telemarketing representative obtained an oral authorization to submit the PIC change order from the customer. Webster's II New Riverside University Dictionary (1994) defines **Authorization** as 1. The act of authorizing. 2. Something that authorizes **and Authorize: ized, izing, izes**. 1. To give authority or power to. 2. To approve or permit: SANCTION.

89. The Authority concludes that MRP did not obtain oral authorizations or requests from its customers to submit PIC change orders as a standard practice because its process does not require that consumers request that MRP change their service.

90. Tenn. Admin. Rule 1220-4-2-.56 (1)(d) applies when a customer initiates a PIC change. We therefore consider whether MRP proved that its Tennessee customers initiated and requested a PIC change prior to MRP initiating a change in customer's PIC's. We conclude that MRP did not meet its burden of proving that its Tennessee customers initiated or requested PIC changes prior to MRP initiating a change in the customer's PIC's.

91. MRP solicited a substantial portion of its Tennessee customers through telemarketing. Its solicitation and verification script is attached hereto as Attachment A. On its face, the telemarketing script neither seeks a customer's authorization, nor does it seek to determine whether the customer is requesting MRP to change his PIC. On cross-examination,

MRP's witness, Mr. Keena, admitted that MRP's solicitation does not expressly seek authorization or customer requests. Instead, MRP insists that the customer is requesting MRP to change his PIC by merely completing the company's information gathering process. We find that the mere completion of an information gathering process is contrary Authority rules.

92. Next, Mr. Keena testified that the customer's authorization or request can be inferred by a positive response to any of several information gathering questions. The Authority rejects MRP's contention. The Authority's Rules do not contain an exception which permits inferences of authorization or requests.

93. Even if the rules did permit inferences of authorization or requests, the Authority would still conclude that MRP has failed to meet its burden of proof. When asked to identify the portions of its script which it believed constituted authorization, Mr. Keena failed to identify any portion of the script that constituted a request or authorization under normal uses of American grammar.⁵²

94. The Authority find of MRP's interpretation of responses to its script that provided requests and authorizations are, inconsistent with and contrary to the normal uses of the English language.

95. Tenn. Code Ann. § 65-4-125 provides a "knows or reasonably should know" standard. "Knows" means actual awareness that the subscriber did not give authority or power to designate or change his provider of telecommunications services, but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or

⁵² Direct Testimony of Drew Keena (as questioned by Chairman Malone and Director Greer) Vol. II pp. 405-407.

would have had reason to know that the subscriber did not give authority or power to designate or change his provider of telecommunications services.⁵³ An objective manifestation of knowledge may include, but is not limited to, a telemarketing script that does not specifically require the subscriber to state that he is making a request to designate or change his provider of telecommunications services or the absence of a specific oral request and authorization by the subscriber to designate or change his provider of telecommunications services or a script which merely infers that a subscriber has requested a designation or change in his provider of telecommunications services, particularly where a statute establishes such a duty.

96. “Should” is defined as the past tense of shall; ordinarily implying duty or obligation; although usually no more than a obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from “ought.”

97. “Reasonably should know,” implies a duty or obligation on the part of telecommunications services provider seeking to designate or change a subscribers telecommunications services provider to inspect, maintain, and evaluate its methods, practices, or manners of solicitation to discover conditions reasonably recognizable by common experience and ordinary prudence which could result in change in the subscriber’s telecommunications services provider without the subscriber’s actual intent to authorize such a designation or change and a duty to remove those characteristics which may result in unauthorized designations or changes or to warn the subscriber that a designation or change of provider will occur. Liability under the ‘should know’ standard is based upon the fact that the telecommunications service provider seeking the

⁵³ Derived from Tenn. Code Ann. § 47-18-103 (6).

authorization to designate or change has superior knowledge of what his processes are intended to accomplish, including but not limited to, the intent to actually accomplish a designation or change of the subscribers telecommunications service provider.

Billing and Charges

98. With respect to billing and charges under Tenn. Code Ann. § 65-4-125 (b), "Knows" means actual awareness that the subscriber has not subscribed to the service for which he is billed or charged, or any amount in excess of that specified in the tariff or contract but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or would have had reason to know that the subscriber has not subscribed to the service for which he is billed or charged, or that any amount billed or charged is in excess of that specified in the tariff or contract. An objective manifestation may include, but is not limited to, a script that does not specifically require the subscriber to state that he agrees to pay the bill or charges for services or the absence of a specific authorization by the subscriber to bill or charge him for services or a script which merely infers that a subscriber authorizes the billing or charging for services.

99. "Reasonably should know," implies a duty or obligation on the part of the billing or charging telecommunications services provider to inspect, maintain, and evaluate its methods, practices, manners of solicitation, and obtaining authorization and to discover conditions reasonably recognizable by common experience and ordinary prudence which could result in an unauthorized or impermissible bill or charge to the subscriber without the subscriber's actual intent to authorize such a bill or charge and a duty to remove those characteristics which may result in unauthorized billing or charging or a charges in excess of a tariff or contract to warn the subscriber that a bill or charge will occur. Liability under the 'should know' standard is based upon the fact that the billing

or charging telecommunications service provider has superior knowledge of what its processes are intended to accomplish, including but not limited to, the intent to actually bill or charge a subscriber.

100. MRP's conduct violates the knows and reasonably should know provisions of Tenn. Code Ann. §§ 65-4-125 (a) and 65-4-125 (b). Moreover, we find the use of responses to these questions as authorizations and requests, misleading and deceptive.

101. Mr. Keena himself testified that the company means something other than the normal grammatical interpretations.

102. Although MRP presented testimony that its telemarketing representative was operating from a physically separate location, it did not present any testimony or evidence to show that the telemarketing representative was appropriately qualified. MRP therefore failed to meet its burden of proof. The burden of proof remained on MRP to prove it has not violated the Authority's Rules.

103. Tenn. Code Ann. § 65-4-125 provides for related actionable violations and provides in pertinent part:

(a) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or persona acting on behalf of the provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.

(b) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

104. The CAD had the burden of proving violations of Tenn. Code Ann. § 65-4-125, and the Authority finds that the CAD meet its burden of proof.

105. The Authority finds that MRP failed to show that it obtained the customer's oral authorization or request to submit PIC change orders and that MRP initiated PIC change orders without the customer making a request in violation of Tenn. Admin. Rule 1220-4-2-.56 (1) (c) and (d).

106. The Authority finds that MRP knew or should have known that Tennessee customers did not authorize a PIC change in violation of Tenn. Code Ann. § 65-4-125 (a). The Authority further finds that MRP's solicitation script and practices with respect to solicitation are misleading and deceptive which respect to its solicitation of PIC changes. The record also shows that MRP does not have any process in place to correct its county wide calling billing errors each month. The company only corrects the bills of consumers who complained to the Authority's Staff. Therefore, MRP's conduct violates Tenn. Code Ann. § 65-4-125(b).

107. The Authority further finds that MRP knew or should have known that Tennessee customers were unlawfully billed and charged for pagers, telephone cards, and county wide service in violation of Tenn. Code Ann. § 65-4-125 (b).

108. Since MRP has not shown that any Tennessee customer has properly switched their service to MRP in compliance with Tennessee statutes or Tennessee Regulatory rules, we conclude that all 35,000 customers MRP claims to have in Tennessee were, "slammed".

109. MRP's telemarketer agents or employees further misrepresented that each individual long-distance call was carried by AT&T, MCI, Sprint or another carrier in order to locate the least costly route for that call by using the phrase "Minimum Rate Pricing" in close conjunction with the names of the well-known carriers. By injecting this phrase, which also happens to be the company's name, into its solicitations in this manner, MRP obscured that fact that it was a pre-subscribed long-

distance carrier, and created the impression that “MRP” referred to a computer program capable of routing each call over a different carrier’s service to find the lowest rate. In fact, each call placed by an MRP subscriber was billed according to MRP’s re-determined price plan, and the specific lines MRP rented to sell its service did not in any way affect those prices.

110. MRP’s telemarketer agents or employees failed to clearly and conspicuously disclose to consumers that MRP’s service plan included fees in addition to its per minute charges for telephone calls, including but not limited to, monthly service charges and termination fees.

111. Even if MRP did not intend to utilize the verification procedure outlined in the Authority’s Rules as a means of complying with those Rules, MRP deceptively used a “verification” Staff to violate the welcome packet procedure authorized under the Rules. Following the telemarketing solicitation, oftentimes regardless of whether the consumer had expressed an interest in MRP’s service to the telemarketer, MRP sent printed materials to the consumer, including a postcard to return to MRP in the event the consumer did not wish to change to MRP as the customer’s long-distance carrier. (Often referred to as a “negative option”) If the consumer did not return the postcard within fourteen (14) days or otherwise contact MRP to cancel service, MRP contacted the consumer’s local exchange company to change the consumer’s long-distance carrier.

MRP’s Recapture, reprovisioning, or switchback Procedure.

112. When consumers discovered that their long-distance service had been switched to MRP, many contacted their previous carriers or their LEC and authorized those carriers to replace MRP as the consumer’s long-distance carrier.

113. When MRP was informed by a local exchange company or its billing agent that a consumer had canceled MRP’s service and substituted another carrier, MRP immediately contacted

the local exchange carrier and recaptured or “reprovisioned” these consumers by switching the customer back to MRP without first notifying the consumers or obtaining the customers authorization.

114. We find that MRP’s actions to recapture customers violated Authority rules and Tenn. Code Ann. § 65-4-125 (a) because the company knew or reasonably should have known that it did not have the authorization or requests of consumers to switch their service back to MRP. Each switchback constitutes a separate violation.

115. In Tennessee, the consumer has absolute rights to terminate his or her use of any telecommunications providers service at any time. No company may negate or reduce the customers rights by contract or otherwise. Moreover, MRP did not clearly and conspicuously disclose its recapture policy to consumers. Instead, MRP’s telemarketer, agents or employees mislead or deceived consumers by misrepresenting during the telephone solicitations that its actions regarding reprovisioning would be limited “to remedy any unauthorized changes to” the consumers service. A consumer who makes changes him or herself is not unauthorized. Furthermore, consumers who had already been slammed once by MRP would notify the consumer’s local phone company to maintain MRP as the consumers service provider unless the consumer contacted MRP in writing. As a result, consumers who had already been slammed once were slammed by MRP a second time, a third time or more.

Other Judgments:

116. MRP has a pattern and practice of committing the types of violations prohibited by the Authority’s Rules and Tenn. Code Ann. § 65-4-125. In addition to the Tennessee Regulatory Authority’s docket, the Authority took official notice that MRP was and has been

involved in other proceedings both in court and before other regulatory commissions of other states. The Attorneys General in approximately 20 states joined in a proceeding against MRP and have since come to settlement. The Orders produced as part of the hearing were:⁵⁴

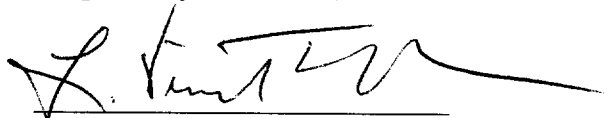
Arizona, Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington.

117. In some states MRP was decertified for various reasons, these states are:

Wisconsin, South Carolina, Georgia, Nebraska.^{55, 56}

118. In addition, the FCC fined MRP for \$1.2 million dollars.

Respectfully Submitted,



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⁵⁴ MRP's Responses and Objection To TRA's Requests And Requests For Production of Documents, p. 5 filed, 10/19/98

⁵⁵ Prepared Direct Testimony of Eddie Roberson, Vol. I, page 12

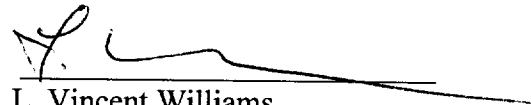
⁵⁶ Direct testimony, Eddie Roberson, December 11, 1998 Volume IV, p. 815

CERTIFICATE OF SERVICE

I, L. Vincent Williams, hereby certify that a copy of the foregoing Findings of fact and Conclusions of law was served on the following parties of record by depositing a copy of the same in the United States mail, postage prepaid, addressed to them, in accordance with the following list, this 17th day of February, 1999:

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Jerry Colley, Esq.
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L. Vincent Williams

MINIMUM RATE PRICING, INC. SALES SCRIPTWho:

Hello. Is this Mr./Ms. _____? This is _____ I'm an account representative with Minimum Rate Pricing Incorporated long distance service. I need to speak to the person in charge of long distance telephone switching authorization. Mr./Ms. _____. Is that you sir/ ma'am?

What:

I'm calling to tell you about an exciting opportunity to simplify the long distance rates you receive Mr./Ms. _____. As a credit selected long distance user, you have now been pre-approved by Minimum Rate Pricing, Inc. for up to a 50% consumer discount on your interstate calling by switching to our new 15¢ per minute long distance service. This simple flat rate is available with local phone company billing through Minimum Rate Pricing Incorporated independent carrier and long distance service. We use the same quality of lines as other major carriers but, the difference is our service. May I continue?

Qualifying Question:

Now, do you spend at least \$10 per month in long distance?

(If Customer's rate is lower, Proceed to Competitive Rating Section below.)

Why:

What's happening is that many long distance users are paying as much as 31¢ per minute on interstate calls on the basic plans of most major carriers. However, by switching to MRP, Inc. long distance, a _____¢ flat discount rate will be available to you for your interstate, intrastate, and local toll/regional calls. Additionally, your first month service charge of \$_____ (\$2.49 residential, \$2.99 per ANI commercial) will be waived! Your Minimum Rate Pricing calls will still be delivered with your local phone company bill, but now you'll have only one simple set of flat rates to worry about for all your interstate and intrastate long distance calls!

COMPETITIVE RATING DISCUSSION SECTION:

Now, does this line have a Flat or Discount rate currently- on either interstate, intrastate, or local toll calling? And, if so, what is that rate?

Really? Let me see if I can qualify you based upon your volume for a lower flat rate right now. How much do you spend each month? Now, where do you call mostly? How much do you spend there? Hold on. (put your customer on hold and review their volume) OK! This number is qualified for a revised flat rate of _____¢ per minute on all interstate long distance calls without fees or restrictions! Your intra-state rate is _____ and your local toll rate is _____.

(Exceptions: Intra-state rates match inter-state rates down to 12¢. Intra-state exception states: ME 42¢. NE, VT & NM are 18¢. Quote local toll rates from your lead record.)

DATA GATHERING:

Now, I show the following information for you:

1. And your billed to number is (AREA CODE AND PHONE NUMBER?)
2. Do you have any additional phone numbers?
3. And the address as (STREET, CITY, STATE, ZIP).
4. And I am speaking with (REPEAT FULL NAME)?
5. I show the spelling of the billing name as (COMPANY NAME)
6. Lastly, who is your current carrier we'll be switching you from?
7. Your usage is \$_____ per month.

How:

Because the selection of Minimum Rate Pricing, Inc., independent carrier services for local and long distance toll calls is only for credit preferred users like yourself, there is no sign up fee. However, if you plan on changing to a new carrier plan, we ask you to call us in advance. Now, all I need to do to activate your _____¢ a minute plan and switch you to Minimum Rate Pricing, Inc., carrier services will be to verify the information we just went over. We will be taping your order and new carrier selection for accuracy, please let us know if the information we have is correct, it will only take a minute. Now, do you have any questions before we begin?

TRANSFER THE CUSTOMER TO VERIFICATION

EXHIBIT

MRP VERBATIM REQUIRED VERIFICATION SCRIPT

Hello! I am (first and last name) with the Verification and Quality Control Department here at Minimum Rate Pricing Incorporated, I will be recording this call to facilitate accurate order entry of the data. The reason we are speaking is just to reconfirm the details you discussed with (sales person's first and last name) in order to receive the Minimum Rate Pricing _____% service and discount plan.

Do you have the authority to approve the discounted service change to Minimum Rate Pricing? OK, great!!

Do you understand that Minimum Rate Pricing will be selecting your underlying carrier either AT&T, MCI, Sprint, or Witel to ensure your _____% discount?

Do you understand that Minimum Rate Pricing, Inc. long distance is not affiliated with your local phone company?

NOTE: These are questions each requiring positive customer responses. If you re-state them as "FACTS" - INSTEAD OF QUESTIONS - your order will be REJECTED!

1. OK, now, your name is _____ and the local phone bill comes in your name, correct?

Note: If they are anyone other than the owner of the phone bill (or their spouse) you must ask: Now is there anyone else that needs to be involved in this decision besides yourself? (If yes, you must get the other person's approval).

2. Now, first, today is (name of day-e.g. Monday), and the date is (Month & day-e.g. August 6th).

→3. Your main Billing Telephone Number is: _____

→4. The exact billing name we have for that number is: _____ Is that how the name appears on the local bill?

→5. Now, the billing address I have for that location is: _____

→6. How much is the long distance portion of your phone bill each month? That's just the long distance, with your long distance carrier right?

NOTE: If they don't know their usage, you must say "is it under \$10, or \$10 or more?"

→7. And, your additional phone numbers are: _____ Correct?

NOTE: State the customers WTN's then List the WTNs billed to the above BTN. Multiple BTNs must be listed on a separate form- one form per BTN only!

→8. Do you have a computer modem line, or a fax line at this location?

→9. Do all of the lines we discussed appear on one local phone bill?

NOTE: If the customer says yes to question 9 - you have only one BTN! Do not purposefully write down WTN's as main BTN - It jeopardizes your contract/employment/financial freedom.

10. Do you receive any other separate local phone bills besides the one we discussed? This would also include other locations.

10a. (If yes) Would you like the discounts to apply there?

→NOW GO BACK AND REPEAT QUESTION 3 THROUGH 9 FOR EACH BTN! - GET THE NEW BTNs BILLING NAME & ADDRESS, →USAGE & WTNs! WRITE UP ALL BTNs & WTNs REGARDLESS OF USAGE. YOU WILL ONLY BE PAID ON OVER \$10 BTNs, BUT TO →SERVICE YOUR CUSTOMER DISCOUNT ALL CUSTOMER LINES INCLUDING HOME PHONES UNDER \$10!

11. We will be sending you our FREE no-surcharge calling card to save you surcharges at pay phones and hotels conveniently billed on your local phone bill.

How many cards would you like?

12. Finally, as a credit preferred customer you are entitled to a FREE Motorola pager with one full month of free unlimited paging. There's no activation fee and no shipping charge - that's \$130 in free paging services! After your first month of free service you may continue using it for a flat monthly fee of only \$11.95 or return the pager at no obligation. Would you like more than one?

(If they want to order you must say):

Great! Now, just don't lose or damage it because there would be an \$89 charge.

12a. (If yes) Now, what is the precise physical street address for delivery of the free pager to your attention?

NOTE: Pagers will be shipped to the decision maker's physical street address only!

Now, your savings will start in about 15 days and toll discounts will start when processed by the phone company. I'd like you to write down the toll free customer service number: (800)408-8998. Also, look for our welcome packet which will be certified mailed to you to guarantee your Minimum Rate Pricing _____% discount in writing! Now, for your account protection, the local phone company will be notified automatically to maintain your MRP discounts until canceled by you in writing and to remedy any unauthorized changes to your service.

Now, before I go, are there any other questions you have about our service? OK, great. Thanks and welcome to the network!

NOTE: ONLY If the customer asks, "can I cancel it verbally?" the answer is "YES, you can also call in to cancel verbally"